



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MAY 25, 2023

IN THE MATTER OF:

Appeal Board No. 628600

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 628595, 628596 and 628597, the claimant appeals from the decisions of the Administrative Law Judge filed March 10, 2023, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective January 4, 2021 through June 27, 2021, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$1,008.00 in benefits recoverable pursuant to Labor Law §

597 (4), Pandemic Emergency Unemployment Compensation (PEUC) benefits of \$5,544.00 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and Federal Pandemic Unemployment Compensation (FPUC) benefits of \$1,200.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 16 effective days and charging a civil penalty of \$1,162.80 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 628598, 628599 and 628600, the claimant appeals from the decisions of the Administrative Law Judge filed March 10, 2023, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective December 28, 2020 through June 6, 2021, on the basis that the claimant was on a paid vacation period; charging the claimant with an overpayment of \$252.00 in benefits recoverable pursuant to Labor Law §

597 (4), and Pandemic Emergency Unemployment Compensation (PEUC) benefits of \$504.00 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's

right to receive future benefits by eight effective days and charging a civil penalty of \$113.40 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance on behalf of the claimant.

We have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made in Appeal Board Nos. 628595, 628596 and 628597. The findings of fact and the opinion of the Administrative Law Judge are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board, except we find that, through the week ending January 17, 2021, the claimant was asked to report the number of calendar days she worked each week. In addition, we are not persuaded by the claimant's contention on appeal that her false certifications do not constitute willful misrepresentations. Even accepting that the claimant called the Department of Labor and was told that she should continue certifying while she was working part time, the claimant does not contend that she was told not to report the days or hours she worked. The claimant's failure to report her work each week, when in fact she knew she worked, establishes that she made willful misrepresentations for purposes of the Unemployment Insurance Law.

In Appeal Board Nos. 628598, 628599 and 628600, based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked four hours per day for a school district during the 2020-2021 school year as a bus driver. During this time, she also collected unemployment insurance benefits based on her loss of her full-time job. Her weekly benefit rate under this claim was \$504.00. Each week, when she certified for benefits online, the claimant answered a series of questions, including one that asked how many days of vacation pay she was owed or paid for that week.

The claimant was paid eight hours of vacation pay for the benefit week ending January 3, 2021, and also was paid eight hours of vacation pay for the benefit week ending April 4, 2021. The claimant was not aware that she was eligible for vacation pay. When she certified for benefits on January 3 and April 4, 2021, the claimant reported that she was not owed or paid any vacation pay.

The vacation pay was documented on the claimant's pay stubs issued January 22, 2021 and April 16, 2021. The school district never paid the claimant holiday pay. The claimant received \$252.00 in regular benefits for the days she received vacation pay in the week ending January 3, 2021, and \$252.00 in PEUC benefits for the days she received vacation pay in the week ending April 4, 2021.

OPINION: The credible evidence establishes that the claimant received eight hours of vacation pay each week for the weeks ending January 3 and April 4, 2021. As the claimant worked four hours per day, these eight-hour payments correspond to two days of vacation each week. We further find, however, that the claimant was never paid holiday pay, as no witness testified that the claimant received holiday pay, and no holiday pay is reported on the claimant's pay stubs. The claimant is ineligible for benefits with respect to the days she was paid vacation pay. Accordingly, we conclude that the claimant is ineligible for two days of benefits during each of the weeks ending January 3, 2021 and April 4, 2021.

The credible evidence further establishes that, when the claimant certified for benefits on January 3 and April 4, 2021, she certified that she was not owed or paid vacation pay. These certifications were factually false, as the claimant subsequently received vacation pay for each of these two weeks. With respect to the days for which she received vacation pay, the claimant received \$252.00 in regular unemployment benefits for the week ending January 3, 2021, and \$252.00 in PEUC benefits for the week ending April 4, 2021. Because the claimant was ineligible for benefits, these benefits were overpaid. The regular benefits are recoverable because the claimant's certification for the week ending January 3, 2021 was factually false. The PEUC benefits are recoverable pursuant to federal law. Because the claimant did not receive holiday pay, however, no benefits can be recoverable based on the claimant's receipt of holiday pay. Accordingly, we conclude that claimant is subject to a recoverable overpayment only with respect to two days in each of the weeks ending January 3 and April 4, 2021. The amount of the overpayment is referred to the Department of Labor for recalculation.

The credible evidence further establishes that, when the claimant certified that she was not owed or paid vacation pay for the weeks ending January 3 and April 4, 2021, she did not know that she would be receiving vacation pay for these weeks. The claimant credibly testified that she never took vacation days and did not know she was eligible for vacation pay. The claimant's only notice

of her receipt of vacation pay was a notation on the pay stubs that she did not receive until weeks after she certified. As she did not know she would be receiving vacation pay, the claimant's certifications were not willful misrepresentations. Further, as the claimant did not receive holiday pay, there can be no issue of willful misrepresentation based on a failure to certify to receiving holiday pay. Accordingly, we conclude that the claimant is not subject to a forfeiture penalty or civil monetary penalty.

DECISION: The decisions of the Administrative Law Judge are modified as follows and, as so modified, are affirmed.

In Appeal Board Nos. 628595, 628596 and 628597, the initial determinations, holding the claimant ineligible to receive benefits, effective January 4, 2021 through June 27, 2021, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$1,008.00 in benefits recoverable pursuant to Labor Law § 597 (4), Pandemic Emergency Unemployment

Compensation (PEUC) benefits of \$5,544.00 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and Federal Pandemic Unemployment Compensation (FPUC) benefits of \$1,200.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 16 effective days and charging a civil penalty of \$1,162.80 on the basis that the claimant made willful misrepresentations to obtain benefits, are sustained.

In Appeal Board Nos. 628598 and 628599, the initial determinations, holding the claimant ineligible to receive benefits, effective December 28, 2020 through June 6, 2021, on the basis that the claimant was on a paid vacation period; and charging the claimant with an overpayment of \$252.00 in benefits recoverable pursuant to Labor Law § 597 (4), and Pandemic Emergency

Unemployment Compensation (PEUC) benefits of \$504.00 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, are modified to be effective with respect to two days in the week ending January 3, 2021 and two days in the week ending April 4, 2021, and, as so modified, are sustained.

In Appeal Board No. 628600, the initial determination, reducing the claimant's right to receive future benefits by eight effective days and charging a civil

penalty of \$113.40 on the basis that the claimant made willful misrepresentations to obtain benefits, is overruled.

In Appeal Board No. 628599, the amount of the overpayment is referred to the Department of Labor for recalculation.

MICHAEL T. GREASON, MEMBER

Federal law provides that New York State can waive repayment of Pandemic Emergency Unemployment Compensation (PEUC), Federal Pandemic Unemployment Compensation (FPUC), Lost Wages Assistance (LWA), Mixed Earners Unemployment Compensation (MEUC) or Pandemic Unemployment Assistance (PUA) benefits overpaid to the claimant if the overpayment was not the claimant's fault and repayment would be contrary to equity and good conscience. For more information on the overpayment waiver process and instructions to request a waiver, please visit the New York State Department of Labor's website, <https://dol.ny.gov/overpayment-waiver-and-appeal-process>.